

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE,
INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington
corporation; ZILLOW GROUP, INC., a
Washington corporation; ZILLOW
HOMES, INC., a Delaware corporation;
ZILLOW LISTING SERVICES, INC., a
Washington corporation; TRULIA, LLC,
a Delaware limited liability company; and
THE NATIONAL ASSOCIATION OF
REALTORS, an Illinois trade association,

Defendants.

CASE NO. 2:21-cv-00312-TSZ

**STIPULATED
PROTECTIVE ORDER**

Plaintiff REX- Real Estate Exchange, Inc. (“REX”) and Defendants Zillow, Inc., Zillow Group Inc, Zillow Homes, Inc., Zillow Listing Services, Trulia, LLC (collectively, “Zillow”) and Defendant National Association of Realtors (“NAR”) jointly stipulate and agree to the entry of a protective order as described below.

1
2 1. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential, proprietary,
4 or private information for which special protection may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this agreement is consistent with LCR
7 26(c). It does not confer blanket protection on all disclosures or responses to discovery,
8 the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable legal
10 principles, and it does not presumptively entitle parties to file confidential information
11 under seal.

12 2. "CONFIDENTIAL" MATERIAL

13 "Confidential" material shall include the following documents and tangible things
14 produced or otherwise exchanged:

- 15 a) Computer programming codes, software, or hardware;
16 b) Customer lists and customer information;
17 c) Internal financial data;
18 d) Proprietary business processes;
19 e) Marketing plans and non-public market research performed by a party, or
20 by a third-party on its behalf;
21 f) Confidential business communications, including contracts and contract
22 negotiations;
23 g) Tax records;
24 h) Documents containing personal identifying information;
25 i) Documents containing non-public, confidential information of third parties;
26 j) Non-public business or strategy plans or forecasts;

1 k) Non-public product or service plans, including documents reflecting non-
2 public research or development of future products or services; and

3 l) Intellectual property or trade secrets.

4 3. SCOPE

5 The protections conferred by this agreement cover not only confidential material
6 (as defined above), but also (1) any information copied or extracted from confidential
7 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
8 and (3) any testimony, conversations, or presentations by parties or their counsel that
9 might reveal confidential material.

10 However, the protections conferred by this agreement do not cover information
11 that is in the public domain or becomes part of the public domain through trial or
12 otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is
15 disclosed or produced by another party or by a non-party in connection with this case
16 only for prosecuting, defending, or attempting to settle this litigation. Confidential
17 material may be disclosed only to the categories of persons and under the conditions
18 described in this agreement. Confidential material must be stored and maintained by a
19 receiving party at a location and in a secure manner that ensures that access is limited to
20 the persons authorized under this agreement.

21 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the designating party, a receiving party
23 may disclose any confidential material only to:

24 (a) the receiving party's counsel of record in this action, as well as
25 employees of counsel to whom it is reasonably necessary to disclose the information for
26 this litigation;

1 (b) the officers, directors, and employees (including in house counsel) of
2 the receiving party to whom disclosure is reasonably necessary for this litigation, unless
3 the parties agree that a particular document or material produced is for Attorney's Eyes
4 Only and is so designated;

5 (c) experts and consultants to whom disclosure is reasonably necessary
6 for this litigation and who have signed the "Acknowledgment and Agreement to Be
7 Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the
10 duplication of confidential material, provided that counsel for the party retaining the copy
11 or imaging service instructs the service not to disclose any confidential material to third
12 parties and to immediately return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure
14 is reasonably necessary and who have signed the "Acknowledgment and Agreement to
15 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
16 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
17 confidential material must be separately bound by the court reporter and may not be
18 disclosed to anyone except as permitted under this agreement;

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 4.3 Filing Confidential Material. Before filing confidential material or
22 discussing or referencing such material in court filings, the filing party shall confer with
23 the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine
24 whether the designating party will remove the confidential designation, whether the
25 document can be redacted, or whether a motion to seal or stipulation and proposed order
26 is warranted. During the meet and confer process, the designating party must identify the

1 basis for sealing the specific confidential information at issue, and the filing party shall
2 include this basis in its motion to seal, along with any objection to sealing the information
3 at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
4 standards that will be applied when a party seeks permission from the court to file
5 material under seal. A party who seeks to maintain the confidentiality of its information
6 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party
7 filing the motion to seal. Failure to satisfy this requirement will result in the motion to
8 seal being denied, in accordance with the strong presumption of public access to the
9 Court's files.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this
13 agreement must take care to limit any such designation to specific material that qualifies
14 under the appropriate standards. The designating party must designate for protection only
15 those parts of material, documents, items, or oral or written communications that qualify,
16 so that other portions of the material, documents, items, or communications for which
17 protection is not warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
20 to unnecessarily encumber or delay the case development process or to impose
21 unnecessary expenses and burdens on other parties) expose the designating party to
22 sanctions.

23 If it comes to a designating party's attention that information or items that it
24 designated for protection do not qualify for protection, the designating party must
25 promptly notify all other parties that it is withdrawing the mistaken designation.
26

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
3 or ordered, disclosure or discovery material that qualifies for protection under this
4 agreement must be clearly so designated before or when the material is disclosed or
5 produced.

6 (a) Information in documentary form: (*e.g.*, paper or electronic
7 documents and deposition exhibits, but excluding transcripts of depositions or other
8 pretrial or trial proceedings), the designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a portion or
10 portions of the material on a page qualifies for protection, the producing party also must
11 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
12 margins).

13 (b) Testimony given in deposition or in other pretrial proceedings: the
14 parties and any participating non-parties must identify on the record, during the
15 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
16 right to so designate other testimony after reviewing the transcript. Any party or non-
17 party may, within fifteen days after receiving the transcript of the deposition or other
18 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
19 confidential. If a party or non-party desires to protect confidential information at trial,
20 the issue should be addressed during the pre-trial conference.

21 (c) Other tangible items: the producing party must affix in a prominent
22 place on the exterior of the container or containers in which the information or item is
23 stored the word “CONFIDENTIAL.” If only a portion or portions of the information or
24 item warrant protection, the producing party, to the extent practicable, shall identify the
25 protected portion(s).
26

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 designating party's right to secure protection under this agreement for such material.
4 Upon timely correction of a designation, the receiving party must make reasonable efforts
5 to ensure that the material is treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation
8 of confidentiality at any time. Unless a prompt challenge to a designating party's
9 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
10 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
11 party does not waive its right to challenge a confidentiality designation by electing not to
12 mount a challenge promptly after the original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a certification,
16 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
17 meet and confer conference with other affected parties in an effort to resolve the dispute
18 without court action. The certification must list the date, manner, and participants to the
19 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
20 conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
22 intervention, the designating party may file and serve a motion to retain confidentiality
23 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
24 The burden of persuasion in any such motion shall be on the designating party. Frivolous
25 challenges, and those made for an improper purpose (*e.g.*, to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the challenging party to

1 sanctions. All parties shall continue to maintain the material in question as confidential
2 until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as
7 “CONFIDENTIAL,” that party must:

8 (a) promptly notify the designating party in writing and include a copy
9 of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by the
12 subpoena or order is subject to this agreement. Such notification shall include a copy of
13 this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under this
19 agreement, the receiving party must immediately (a) notify in writing the designating
20 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
21 copies of the protected material, (c) inform the person or persons to whom unauthorized
22 disclosures were made of all the terms of this agreement, and (d) request that such person
23 or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached
24 hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

Respectfully submitted this 22nd day of April, 2021.

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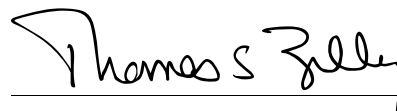
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***Attorneys for The National Association
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IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 22nd day of April, 2021.



Thomas S. Zilly
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of
Washington on [date] in the case of REX-Real Estate Exchange, Inc. v. Zillow, Inc, et al.,
Case No. 2:21-cv-00312-TSZ. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Western District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____